

UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF NEW YORK

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BRIAN JOHNSTON and NILE CHARLES,

Plaintiffs,

v.

APPLE INC.,

Defendant.  
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1:11-cv-03321-JSR

**NOTICE OF MOTION FOR  
JUDGMENT PURSUANT TO  
FEDERAL RULE OF CIVIL  
PROCEDURE 12(B)(6) AND  
12(D)**

**NOTICE OF MOTION FOR JUDGMENT PURSUANT TO FEDERAL RULE OF CIVIL  
PROCEDURE 12(B)(6) AND 12(D)**

PLEASE TAKE NOTICE, that upon the accompanying memorandum of law; the June 2, 2011 Declaration of Thomas M. Crispi in Support of Apple Inc.'s Motion for Judgment Pursuant to Federal Rule of Civil Procedure 12(B)(6) and Rule 12(D) (the "Motion to Dismiss the Complaint"); the May 23, 2011 Declaration of Pierre Auguste in Support of Apple Inc.'s Motion to Dismiss the Complaint; and the exhibits submitted in connection therewith, Apple Inc. will move this Court in Courtroom 14B at the United States Courthouse, 500 Pearl Street, New York, New York, on June 28, 2011, at 4:00 P.M., for an Order pursuant to Federal Rule of Civil Procedure 12(b)(6) and Federal Rule of Civil Procedure 12(d), granting judgment to Apple Inc., and for such other and further relief as to this Court seems just and proper.

PLEASE TAKE FURTHER NOTICE that, pursuant to the Court's schedule, Plaintiffs' answering papers, if any, are due on June 15, 2011, and Defendant's reply papers, if any, are due on June 22, 2011.

**Signature Block Appears on the Following Page**

Dated: New York, New York  
June 2, 2011

Respectfully submitted,

SCHIFF HARDIN LLP

/s/ Thomas M. Crispi

Thomas M. Crispi

tcrispi@schiffhardin.com

Kellen G. Ressmeyer

kressmeyer@schiffhardin.com

666 Fifth Avenue, 17th Floor

New York, New York 10103

Telephone: (212) 753-5000

Facsimile: (212) 753-5044

*Counsel for Apple Inc.*